[11884/407001]

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of: Andreas Schaefer	Examiner: Paul Danneman
For: BALANCED BUDGET UPDATE IN THE PRESENCE OF RIB RULES	
	Art Unit: 3627
Filed: December 10, 2003	
Serial No.: 10/730,948	

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF UNDER 37 C.F.R. § 41.41

SIR:

Appellant submits the present Reply Brief in response to the Examiner's Answer dated December 28, 2009.

Claims 1 to 4 and 6 to 20 have been finally rejected.

For the reasons set forth in the Appeal Brief and those set forth below, it is again respectfully submitted that the final rejections of claims 1 to 4 and 6 to 20 should be reversed.

Appellant incorporates herein arguments previously presented in the Appeal Brief dated October 15, 2009 ("the Appeal Brief"). In addition, the following comments are presented to further highlight the differences between the claimed subject matter and the applied prior art references.

A. Rejection of claims 1 to 4 and 6 to 20 under 35 U.S.C. § 102(b)

Claims 1 to 4 and 6 to 20 stand rejected under 35 U.S.C. § 102(b) based upon alleged public use or sale of the invention with reference to the "2000 Development Requests at HERTUG (Higher Education and Research Institutions)" [*sic*] as seen at http://web.mit.edu/her/devreq/votedevreq00.htm ("HERUG reference") at item 7. It is respectfully submitted that the Examiner's Answer ("Examiner Answer" or "Answer") is insufficient. First, the Examiner finally acknowledges that the HERUG reference does not disclose a system in public use or on sale – a requirement of 35 U.S.C. § 102 (b). Second, the Examiner's analysis does not show the RIB system discussed in the HERUG reference actually meets the substance of the claims.

In his answer, the Examiner acknowledged that the HERUG reference is a wish list, created by SAP customers. He states:

> the HERUG institutional representatives are requesting certain functionality, and they are not dictating how SAP should implement that functionality at the software programming level.

Obviously, the Examiner agrees that none of the *requested* functionality listed in the HERUG reference was in public use or on sale at the time the reference was prepared. Thus, to the extent the Examiner is relying on requested functionality, the public use/sale rejection is clearly inappropriate. To raise an on sale bar, there must have been a system that was publicly used or sold – not merely functionality that was requested. This is a first basis on which to reverse the Examiner's rejection.

The Examiner also failed to demonstrate that the functionality requested by the HERUG reference meets the substance of the claims. The Examiner argued that "[m]aintaining a balance between expenditures and revenues is an inherent feature of basic financial accounting" but, even if true, this functionality is not descriptive of the specific features of claim 1. Claim 1, for example, states (emphasis added):

> executing a RIB rule to determine whether *the new transaction* causes an increase to **an expenditure budget**;
>
> if the new transaction causes an increase to the expenditure budget, storing the budget increase in a node of **an expenditure budget** data structure with an indication that the node represents an increase in the expenditure budget; and
>
> storing **the budget increase** in an identified node of **a revenue budget data structure** with an indication that the node represents an increase in the revenue budget, wherein values in the expenditure budget data structure balance with values in the revenue budget data structure.

Even if expenditure and revenue balance is inherent to basic financial accounting, it applies to transactional records and balance sheets, e.g., a balance of assets and liabilities. Claim 1, however, relates to "an expenditure ***budget***" and "a revenue ***budget***" being affected by a transaction. A *budget* is a forward looking projection or plan, and is distinct from a balance sheet recording historical events, i.e. transactions, which is the accounting instrument traditionally requiring balance. A balancing of "an expenditure budget" and "a revenue budget" is not inherent in HERTUG and is not inherent to any asserted accounting principles. To the extent the Examiner identifies HERTUG as evidence of "[t]he execution of a RIB rule" as already in use, the background of the present application could equally be cited, as Applicants have consistently stated that RIB rules are known in the art. However, there is simply no basis in the cited references or the relevant arts – as understood by a person of ordinary skill – that supports "values in the expenditure budget data structure balanc[ing] with value in the revenue budget data structure" being inherent to RIB accounting or general accounting principles. The Examiner's inherency reasoning is incorrect.

As further evidence that HERUG fails to disclose the features of the present claims, the Examiner states: "the term 'node' does not appear because the term is used when programming a hierarchical tree (data) structure consisting of a set of linked nodes, the HERUG institutional representatives are requesting certain functionality, and they are not dictating how SAP should implement that functionality at the software programming level." Here, the Examiner essentially concedes that HERTUG does not describe the specific system recited in claim 1. Claim 1 recites specific features related to implementation of functionality at the software programming level, as quoted above, and, as indicated on page 15 of the Answer, the Examiner is essentially admitting that HERTUG is "not dictating how [Applicants] should implement th[e described system's] functionality at the software programming level." This clearly is insufficient to provide any suggestion that the specific features of claim 1 were in public use at the time of HERTUG.

The Examiner also quotes HERTUG as stating that "[b]udget is sometimes given in a previous fiscal year, [and] we then have to manually journalize this into the current fiscal year." The Examiner states on page 16 of the Answer, that "[t]his represents a basic accounting principle of <u>balancing revenues with expenditures</u> in the current accounting period." As can plainly be seen from the quote, it is wholly unrelated to balancing revenues with expenditures.

With regard to claim 4, the Examiner states that "there is a request to improve the FM line item reports. FM (Funds Management) is the SAP module which is referred by name in

Item 1's 'Description' column in the HERUG reference. This is a clear indication that there is a reporting structure and template in the FM module of which RIB interacts with and/or is part of." Again, the Examiner is taking a broad concept "to improve the FM line item reports," as somehow inherently disclosing specific features, such as those of claim 4, which recites: in "respons[e] to a **report template**, retrieving expenditure budget values and revenue budget values from storage, and *computer-generating a report that compares the expenditure budget values and the revenue budget values*, wherein **the report template indicates** whether values from revenue budget items generated according to RIB rules are to be included in the report." This *specific* report template and computer generated report are not found in the HERUG reference.

B. Rejection of Claims 1, 4, 6, 14, 17, 19, and 20 under 35 U.S.C. § 103(a):

Claims 1, 4, 6, 14, 17, 19, and 20 are patentable over a PowerPoint® slide presentation regarding, Introduction to Management Accounting 12/e, Horngren/Sundem/Stratton, 2002, Prentice Hall Business Publishing ("Prentice"), in view of U.S. Patent No. 6,275,813 ("Berka"), and in further view of U.S. Patent No. 7,131,579 ("Kim").

As noted in our Appeal Brief, this rejection must be reversed because the cited art, even if considered in combination, fails to disclose "wherein values in the expenditure budget data structure balance with values in the revenue budget data structure." In response, the Examiner relies on the general statement "that well known accounting practice requires that entries regarding revenue and expenses must be balanced." Examiner Answer at page 18. First, this is erroneous as a broadly undefined statement. It may be true that some entities require this, but it is in no way "a well known accounting practice" to *require* this. For-profit companies, by definition, strive to have an imbalance in revenues and expenditures favoring the former. Entities often expend more than the revenues taken in. The Examiner has yet to provide a single reference for the idea that revenues must balance with expenditures, let alone balancing a *revenue* ***budget*** and an *expenditure* ***budget***.

For example, with regard to the feature "wherein values in the expenditure budget data structure balance with values in the revenue budget data structure," the reasons stated for the rejection are found on page 6 of the Answer, which states (emphasis added):

> Prentice in at least Slide 8-5 discloses an **imbalance** between expenses (planned versus actual) which results in a variance. [Imbalance is clearly not balance.] Berka in at least Column 1, lines 12-19 discloses a computerized system of double-entry financial accounting and, in particular, to a method of

> entering data from financial **transactions** into a computer program that posts the entered information according to the known accounting theory of **debit and credit**. [Transactions are unrelated to budgets, one being a record of what has happened, and the other being a forecast of what will happen. Further, known debit and credit is unrelated to an expenditure budget and a revenue budget.] Berka further discloses that in accounting the term '**posting**' means transferring the debits and credits (expenses and revenue) from the journal to the general ledger. [Even if debit could be an expense and a credit could be a revenue, this still compares transactions (Berka) with budgets (claim 1), which are wholly unrelated (e.g., past vs. future).] Kim in at least Fig. 3, Column 3, lines 63-67 and Column 4, lines 1-55 discloses a journalizing method matching accounts of debit and/or credits with each of the plurality of **transaction** outlines to obtain account-matched **transaction** outlines having **transaction** classification codes. Kim in at least Column 5, lines 56-67 further discloses that the double-entry book-keeping principle is based on *balancing the debits with the credits* and the amounts of each debit and credit. [This is again wholly unrelated as referring to past transactions and not budget forecasts of future events.]

As seen above, the relied on prior art deals exclusively with past event *transactions* and not forward looking *budgets*, totally failing to disclose the claim feature "wherein values in the *expenditure* ***budget*** *data structure* **<u>balance</u>** with values in *the revenue* ***budget*** *data structure*."

Additionally, the Examiner calls attention to "Applicant's [*sic*] specification in paragraph 3[, which] discloses 'Revenue budgets typically forecast revenues that the organization expects to earn over a predetermined fiscal period. The process of defining revenue budget values and expenditure budget values is an integrated process. Many organizations, particularly public sector organizations, require that the revenue budget and the expenditure budget remain balanced.'" Examiner Answer at page 18. First, this section clearly indicates that at least some organizations, particularly private sector organizations, ***<u>do not</u>*** require that the revenue budget and the expenditure budget remain balanced. By relying on this section, the Examiner wholly contradicts the previous argument that balancing revenues with expenditures is an ***<u>inherent</u>*** requirement of known accounting principles (let alone balancing revenue *budgets* with expenditure *budgets*).

Secondly, as discussed above, "Budget" has a plain meaning, which includes a plan, forward looking estimate, or similar. Applicants define this in the specification at paragraph 3, which the Examiner has relied upon in characterizing the claims, reciting that "[r]evenue budgets typically *forecast* revenues that the organization *expects* . . ." None of the cited art disclose anything close to a revenue forecast, let alone balancing this <u>revenue</u> *forecast (i.e. budget)* with an <u>expenditure</u> *budget*. To this, the Examiner answers that "Claim 1 does not disclose a 'revenue forecast.'" Claim 1 specifically recites, "storing the budget increase in an

identified node of a <u>revenue</u> **budget** data structure with an indication that the node represents an increase in the <u>revenue</u> **budget**, wherein values in the expenditure budget data structure balance with values in the revenue budget data structure." "Budget" is entitled to the broadest reasonable interpretation, but has a plain meaning that simply does not include a journal of prior *transactions*, *postings*, or other such <u>past</u> events.

For example, the posting database of Berka is asserted against this feature, but in the Examiner's Answer it is acknowledged that "Berka further discloses that . . . the <u>term 'posting' means transferring the debits and credits (expenses and revenue) from the journal to the general ledger</u>." Examiner Answer at page 20 (emphasis in original). A posting, a journal, and a general ledger all deal with transactions that have occurred. This is the opposite of a budget, which deals with future expectancies, not past events. It is true that claim 1 recites a transaction, e.g., "receiving data of a new **transaction** that includes a revenue item," which may be analogous to the posting records of Berka. However, the subsequent features of claim 1 relate to an expenditure budget and revenue budget, which are not found in the cited prior art. Further, once the difference between a revenue posting and a revenue budget item are appreciated, it is clear that the cited prior art deals exclusively with modifying posting databases, and has nothing to do with the dual storing, marking, and balancing of an expenditure <u>budget</u> and a revenue <u>budget</u>, as recited in claim 1.

Likewise, the Examiner's reasoning with regard to claims 6, 14, 17, 19, and 20 is equally flawed. Here too, the Examiner is relying on prior art accounting features that use similar terminology, e.g., "revenue" and "expenditure," but are actually quite different than the specific arrangement of claim 1, as it relates to a dual storage, marking, and balancing of both an expenditure <u>budget</u> and a revenue <u>budget</u>. Further, the rejection of claims 2, 3, 7 to 13, 15, 16, and 18 are flawed for the same reasons as the claims they respectively depend from. As such, reversal of these rejections is respectfully requested.

For the foregoing reasons and for the reasons more fully set forth in the Appeal Brief, it is respectfully submitted that the final rejections of the pending claims should be reversed.

Respectfully submitted,

KENYON & KENYON LLP

Dated: February 17, 2010 By: /John B. Gillick, Jr./

John B. Gillick, Jr.
Registration No. 63,027

One Broadway
New York, New York 10004
(212) 425-7200

CUSTOMER NO. 26646